

In the Matter of license No.230840 and all other seaman documents
Issued to: FRANK STANLEY SIWIK

DECISION OF THE COMMANDANT
UNITED STATES COAST GUARD

1193

FRANK STANLEY SIWIK

This appeal has been taken in accordance with Title 46 United States Code 239(g) and Title 46 Code of Federal Regulations 137.11-1.

By order dated 18 January 1960, an Examiner of the United States Coast Guard at New York, New York suspended Appellant's seaman documents for twelve months upon finding him guilty of negligence. The two specifications allege that while serving as Master on board the United States SS SANTA ROSA under authority of the license above described, on or about 26 March 1959, Appellant contributed to a collision between his vessel and the United States SS VALCHEM by navigating the Santa Rosa at an immoderate speed under conditions of fog and restricted visibility; and by failing to stop the engines of the Santa Rosa upon hearing the fog signal of a vessel forward of the beam of the Santa Rosa, the position of which was not ascertained.

At the hearing, Appellant was represented by counsel of his own choice. Appellant entered pleas of not guilty to both specifications.

The Investigating Officer and Appellant's counsel made their opening statements. The entire transcript of the Coast Guard casualty investigation of this collision was stipulated in evidence. The Investigating Officer then rested.

Appellant testified in his own behalf. Also, three character witnesses testified as to Appellant's excellent reputation as a seaman.

At the end of the hearing, after considering the arguments submitted by the parties, the Examiner rendered the decision in which he concluded that the charge and two specifications had been proved. An order was entered suspending all documents, issued to the Appellant, for a period of twelve months.

On 26 March 1959, Appellant was serving as Master on board the United States SS SANTA ROSA and acting under the authority of his License No. 238040 when his ship collided with the United States SS VALCHEM in the Atlantic Ocean off the coast of New Jersey in waters governed by the International Rules of the Road. The collision occurred at 0302 in dense fog which limited the visibility to approximately one-quarter of a mile. The bow of the SANTA ROSA penetrated the port side of the VALCHEM at an angle of ninety degrees in the vicinity of the engineering spaces. Four men were killed and twenty-one injured. The casualty was not caused by any material failure.

Property damage to the two ships amounted to nearly two million dollars.

The SANTA ROSA is a passenger ship, 584 feet in length and 15,371 gross tons. She was on a northerly course enroute from Port Everglades, Florida with 247 passengers on board. The ship was equipped with radar which was in good condition and in operation at all pertinent times.

The VALCHEM is a tanker, 523 feet in length and 10,416 gross tons. She had no cargo and was not gas free. She was carrying water ballast outbound from New York enroute to Baytown, Texas. The SANTA ROSA was picked up on the radar, about fifteen minutes before the collision, bearing one or two degrees on the starboard bow while the VALCHEM was on course 194 degrees true making 16 knots. Course was altered to the right and the VALCHEM steadied on 210 degrees true six minutes before the collision. This put the SANTA ROSA fifteen degrees on the port bow. Thereafter, the VALCHEM commenced changing course to her right since the true bearing of the SANTA ROSA remained substantially constant. The engines of the VALCHEM were stopped about two minutes before the collision. She was making about thirteen knots on a heading of 257 degrees true when struck by the SANTA ROSA.

AT 0220, the Santa Rosa encountered fog while on course 010 degrees true, speed 21 knots. The Second Mate on watch called Appellant and he went to the bridge. Fog signals were commenced and the engines were on standby without any reduction in speed. Visibility improved and the fog signals were secured. About 0245, Appellant left the bridge to dress. Shortly thereafter, the SANTA ROSA overtook another ship and passed her about three quarters of a mile to port. This ship was at least a mile away at the time of the collision.

Appellant returned to the bridge at 0250. Course and speed remained the same. The standby order to the engine room was cancelled since visibility temporarily improved. At 0252, Appellant observed a pip on the radarscope which represented the VALCHEM. She was six degrees on the starboard bow of the SANTA ROSA at a distance of about six miles. Visibility was then decreasing.

At 0254, the radarscope indicated that the VALCHEM was bearing 018 degrees true at a distance of 4.9 miles. This information was reported to Appellant by the Second Mate and plotted by the latter. Appellant ordered the engines on standby but there was no change in speed. Fog signals were resumed. There was a lookout on the bow. Three minutes later, at 0257, the radar showed the VALCHEM bearing 020 degrees true, distance 3 miles. This was reported to Appellant and plotted. Appellant ordered a course change to 005 degrees true. An extension of the line between the two plotted positions indicated that the closest point of approach of the VALCHEM would be three-tenths of a mile to starboard. Appellant changed course to 000 degrees true to increase this distance. The radarscope was not under observation from 0257 until about 0300 although the VALCHEM could not be seen during this time.

At approximately 0258, the bow lookout reported hearing a fog signal off the starboard bow. Appellant was informed of this report at the time. Almost two minutes later, Appellant looked at the radarscope and observed that the bearing of the VALCHEM was closing, rather than opening, on

the starboard bow. He immediately ordered left full rudder and heard a fog signal about the same time. Visibility was then between one-half and one quarter of a mile. At 0301, Appellant saw the lights of the VALCHEM loom out of the fog on the starboard bow of the SANTA ROSA at a distance of a quarter of a mile. He ordered the rudder shifted to right full and the engines full astern in an attempt to pass astern of the other ship but the SANTA ROSA was swinging left and still making about 21 knots when she struck the port side of the VALCHEM at 0302. The SANTA ROSA proceeded under her own power to New York and the VALCHEM was towed to Brooklyn.

Appellant has no prior record.

BASES OF APPEAL

This appeal has been taken from the order imposed by the Examiner. It is urged that:

Point I The speed of the SANTA ROSA was moderate because she could have been stopped in one-half mile which was within one-half the distance of visibility until shortly before the collision when the rule of Special Circumstances became applicable due to the erratic maneuvering of the VALCHEM(First Specification).

Point II. Appellant was not required to stop the engines of the SANTA ROSA because the position of the VALCHEM was "ascertained" by radar (Second Specification).

Point III. THE one-year suspension of Appellant's license from 20 January 1960 (date of surrender of license) is inequitable because he did not attempt to sail during the ten months between the date of the collision and the suspension of his license.

Point IV. Appellant has been denied a property right without due process of law since he was charged under 46 U.S.C. 239 rather than 46 U.S.C. 226; under either statute proof of a "willful" violation of the Navigation Rules is required; the burden of proof was shifted to Appellant; the word "negligence" has not been defined for the purpose of these proceedings for the benefit of Appellant or the Examiner.

In conclusion, it is respectfully submitted that the suspension be vacated.

APPEARANCE: Kirlin, Cambell and Keating of New York City, by Raymond T. Greene and Daniel T.Sweeney, of Counsel

It is my opinion that the evidence in the record clearly supports the allegations contained in the two specifications and that the order imposed by the Examiner is justified by these offenses. The specifications are based on the wording in Rule 16 of the International Rules of the Road (33 U.S.C. 145n) which is strictly enforced by the courts. This rule requires a vessel to go at a moderate speed in fog (first specification) and to stop her engines upon hearing, apparently forward of the beam, the fog signal of a vessel the position of which is not "ascertained" (second specification).

Point I. The rule of Special Circumstances (Rule 27, 33 U.S.C. 146k) cannot be invoked to justify the continued high speed of the SANTA ROSA because, as stated by the examiner and by the rule itself, this rule may only be used "to avoid immediate danger." By the time Appellant looked at the radarscope about two minutes before the collision, the condition of immediate danger was already present, and the visibility was not more than one-half mile (the distance required to stop the SANTA ROSA). Therefore, at least by this time, and thereafter, her speed was not moderate since the rule of Special Circumstances did not apply to exonerate Appellant. The ship astern of the SANTA ROSA was not close enough to justify departure from the usual rule.

Point II. It has been stated repeatedly that the command to stop the vessel's engines is imperative when the conditions described in the above Rule 16 confront the navigator and that the observation of ship movements indicated by the radarscope is not sufficient to "ascertain" the position of another ship. See Commandant's Appeal Decisions Nos. 955, 1078 and authorities cited therein.

In addition, Appellant admitted in his testimony at the hearing that nobody was observing the radarscope for 2 1/2 to 3 minutes after the second range and bearing was observed at 0257 (R.33) (The radar information indicates that the two ships would have passed each other in five minutes if their courses and speeds had remained unchanged.) This lapse at a critical time caused the calculations from the plot of the two sets of ranges and bearings to be misleading. By watching the radarscope after 0257, Appellant or his watch officer would have observed the gradual change of course by the VALCHEM to her right. This actually started prior to the time when the second plotted range and bearing was obtained. Appellant did not realize that the VALCHEM had been changing course until he finally looked at the radarscope again about two minutes prior to the collision and saw that her bearing was closing on the starboard bow. He did not know or even suspect that the VALCHEM would be in the position indicated at this time. Therefore, the position of the VALCHEM was definitely not "ascertained" earlier, at 0258, when the hearing of her fog signal was first reported to Appellant. The engines should have been stopped at that time.

Point III. Since Appellant was free to use his license until found guilty by the Examiner, I do not think that this interim period of ten months should be considered as part of the period of suspension imposed by the Coast Guard.

Point IV. The history of these proceedings does not support the contention that Appellant has been denied due process of law. The wording of 46 U.S.C.239 and related statutes (46 U.S.C.246(c), 526f, 672,(h)) support the concept that 46 U.S.C. 239 governs all proceedings against licenses. Hence, the statutory authority of 46 U.S.C. 226 to suspend or revoke a Master's license is considered to be encompassed within and limited by the general statute (46 U.S.C. 239) to the extent that a willful violation of the provisions of Title 52 of the Revised Statutes must be proved, to revoke or suspend, only when the seaman is not acting under the authority of his license at the time alleged. See Commandant's Appeal Decision No. 491. The charge of "negligence" under 46 U.S.C. 239(g) is appropriate when the seaman is acting under authority of his license and this charge is considered to have the same significance as the words has been made clear in numerous prior decisions of the Commandant. In accordance with the required standard of care set forth in these decisions, I think

it is perfectly clear from the record that Appellant was properly found guilty of negligence without placing the burden on Appellant to justify his conduct. The facts leave no doubt in my mind.

ORDER

The order of the Examiner dated at New York, New York on 18 January 1960, is
AFFIRMED.

A C Richmond
Admiral, United States Coast Guard
Commandant

Dated at Washington, D.C., this 9th day of September 1960.